



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 28, 1998

Mr. Vernon M. Arrell  
Commissioner  
Texas Rehabilitation Commission  
4900 North Lamar Blvd.  
Austin, Texas 78751-2399

OR98-0274

Dear Mr. Arrell:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112065.

The Texas Rehabilitation Commission (the "commission") received a request for information including Performance Appraisal/Development Plans and written reprimands for a former commission employee. You assert that the information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. The commission received the written request for information on October 10, 1997. You did not request a decision from this office until October 31, 1997, more than ten business days after the requestor's written request. Therefore, we conclude that the commission failed to meet its ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379 (Tex.App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex.App.--Houston[1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982); Gov't Code § 552.302. The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2. Upon review of your arguments against

disclosure of the information, we conclude you have not shown a compelling interest for overcoming the presumption that the requested information is public. *See* Open Records Decision No. 473 (1987). Therefore, you may not rely upon section 552.103 to withhold the requested information. As you raise no other exceptions to disclosure, you must release the requested information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID# 112065

Enclosures: Submitted documents

cc: Ms. Esmeralda Setterlund  
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(w/o enclosures)